

## The Middling Sort at Court in early medieval Christian Iberia\*

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**Abstract:** Analyses of judicial procedure in an Iberian context overwhelmingly focus on the role played by experts and elites in the construction of rather nebulous “networks of power”. This article asks questions of the involvement at court of the “middling sort”, upwardly-mobile lay individuals embedded in or close enough to the village world to engage in humdrum and quotidian deals with its inhabitants: that is, people who were not counts, legal experts or churchmen, but were nonetheless locally important landowners.<sup>1</sup> Via a series of case-studies, this article shines a light on what these individuals did at court and why they went to court. It also ponders how disagreements were settled outside of the courtroom, and reflects upon what the diversity of dealings

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\* The following conventions in the citing of charters are used in this article: Cel1, Cel2, etc., from *Colección diplomática del monasterio de Celanova (842–1230)*, 3 vols., (Alcalá de Henares: Universidad de Alcalá, 1996, 2000, 2006), eds. E. Sáez and C. Sáez; L1, L2, etc., from *Colección documental del archivo de la catedral de León (775–1230)*, vol. 1., 775–952 (León: Centro de Estudios e Investigación (CSIC–CECEL), 1987), ed. E Sáez; *Colección documental del archivo de la catedral de León (775–1230)*, vol. 2., 953–85 (Centro de Estudios e Investigación (CSIC–CECEL), 1990), eds. E. Sáez and C. Sáez; *Colección documental del archivo de la catedral de León (775–1230)*, vol. 3., 986–1031 (León: Centro de Estudios e Investigación (CSIC–CECEL), 1987), ed. J.M. Ruiz Asencio; T1, T2, etc., from *Cartulario de Santo Toribio de Liébana* (Madrid: Archivo Histórico Nacional, 1948), ed. L. Sánchez Belda; PMH1, PMH2, etc., from *Portugaliae monumenta historica a saeculo octavo post Christum usque ad quintumdecimum. Diplomata et chartae*, vol. 1 (Lisbon: Typis Academicis, 1868), eds. A. Herculano de Carvalho e Araujo and J.J. da Silva Mendes Leal; Sob1, Sob2, etc., from *Tumbos del monasterio de Sobrado de los Monjes*, 2 vols., (Madrid: Dirección General del Patrimonio Artístico y Cultural, Archivo Histórico Nacional, 1976) ed. P. Loscertales de García de Valdeavellano; OLD1, OLD2, etc., from *Colección documental del monasterio de Santa María de Otero de las Dueñas, I (854–1108)* (León: Centre de Estudios e Investigación “San Isidoro”, 1999), eds. J.A. Fernández Flórez and M. Herrero de la Fuente; SMP1, SMP2, etc., in ed. M. Serrano y Sanz, “Cartulario de la iglesia de Santa María del Puerto (Santoña)”, *Boletín de la Real Academia Historia* 73 (1918): 420–42.

<sup>1</sup> Dr Graham Barrett and I plan to treat the ‘middling sort’ at length in a forthcoming publication. I thank him for his comments on a draft of this article. Likewise, I thank Chris Wickham for his comments on an early version of this article. I am also grateful for comment received from the editor, as well as suggestions made during the peer-review process.

encoded in the apparent formality of legal proceedings, and the incidental reports of extra-judicial agreements, actually tells us about social practice.

Keywords: Justice; village society; the peasantry; charters; dispute settlement

For Rome, and – later – Islam, the south and the east of Iberia offered prosperity just as surely as they sharpened the perspective of a governing class located in the central and eastern reaches of the Mediterranean. In Barcelona, Valencia, Cartagena and Málaga, connections with the wider “Mediterranean World System” were given tangible form by the once thriving commercial enterprise now emerging in the archaeological record.<sup>2</sup> For centuries, these cities looked across the Mediterranean

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<sup>2</sup> Brent Shaw, “Rome’s Mediterranean World System and its Transformation”, Princeton/Stanford Working Papers in Classics (Paper Number 040801), April 2008, available at <https://ssrn.com/abstract=1427395>. On Barcelona: Philip Banks, “The Roman inheritance and topographical transitions in early medieval Barcelona”, in *Papers in Iberian Archaeology*, eds. T.F.C. Blagg, R.F.J. Jones and S.J. Keay (Oxford: BAR, 1984), 600-34; Josep Maria Gurt Esparraguera and Cristina Godoy Fernández, “*Barcino*, de sede imperial a *urbs regia* en época visigoda”, in *Sedes regiae (ann.400-800)*, eds. G. Ripoll and J.M. Gurt Esparraguera (Barcelona: Reial Acadèmia de Bones Lletres, 2000), 425-66; Julia Beltrán de Heredia Bercero, “Las producciones locales y importaciones de cerámica común del yacimiento de la plaza del Rey de Barcelona, entre la época visigoda y el período islámico. Siglos VI-VIII”, *Quaderns d’arqueologia i història de la ciutat de Barcelona* 1 (2005): 68-89. On Valencia, Miquel Rosselló Mesquida, Albert Ribera i Lacomba and Josefa Pascual Pacheco, “Cerámicas de la ciudad de Valencia entre la época visigoda y omeya (siglos VI-X)”, in *Cerámicas tardorromanas y altomedievales en la Península Ibérica: ruptura y continuidad*, eds. L. Caballero Zoreda, P. Mateos Cruz and M. Retuerce Velasco (Madrid: CSIC, 2003), 67-118. On Málaga, see the nothing if not thorough, *Comercio y comerciantes en la historia antigua de Málaga: (siglo VIII a.C.-año 711 a.C.): II Congreso de Historia Antigua de Málaga* (Málaga: Diputación de Málaga, 2001). Recent work has indicated that parts of the south-east of Spain were more commercially vibrant and complex

to the heartlands of empire, to the distant shores of Rome and Constantinople. By contrast, the Visigothic kings made do with the dusty plains around Toledo, as the commercial activity of the Roman Mediterranean fast faded from view throughout the sixth and seventh centuries.<sup>3</sup> Perspectives were altered if not entirely changed by the Arab invasion of 711. Soon secure in their capital at Córdoba, the new wielders of political power in al-Andalus fixed their gaze in a southerly direction, across the Pillars of Hercules to North Africa and its riches; in the following centuries, under emir and caliph, the great Roman cities of the interior of Andalucía – Sevilla, Málaga, Córdoba itself – enjoyed renewed affluence and influence.<sup>4</sup>

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than was once thought, at least until the Visigothic reconquest of Byzantine Spain in the 620s: see, for example, Jaime Vizcaíno Sánchez, *La presencia bizantina en Hispania (siglos VI-VII): la documentación arqueológica* (Murcia: Universidad de Murcia, 2009); Sebastian F. Ramallo Asensio, “*Carthago Spartaria*, un núcleo bizantino en Hispania”, in *Sedes regiae*, Ripoll and Gurt, 579-611. More generally, Paul Reynolds, *Hispania and the Roman Mediterranean, AD 100-700: Trade and Commerce* (London: Duckworth, 2010).

<sup>3</sup> Chris Wickham, *Framing the early Middle Ages: Europe and the Mediterranean, 400-800* (Oxford: Oxford University Press, 2005), 741-6; also largely stressing relative scarcity and dwindling quality are the essays collected in Caballero Zoreda, Retuerce Velasco and Mateos, *Cerámicas tardorromanas y altomedievales*.

<sup>4</sup> Magdalena Valor Piechotta, “La estructura urbana de la Sevilla pre-Almohade”, in *III Congreso de Arqueología Medieval Española* (Madrid: Asociación Española de arqueología medieval, 1989), 327-40; José Ramírez del Río, “Pueblos de Sevilla en época islámica. Breve recorrido histórico-político”, *Philología Hispalensis* 13 (1999): 15-40; Antonio Arjona Castro, “Hacia una nueva visión histórica de la Córdoba Islámica”, *Arbor* 654 (2000): 175-90. It is important to emphasise that the return to prosperity of the Andalusian cities was matched by an upturn in cultural and intellectual links with a wider Mediterranean world.

Beyond the south and east, the picture was very different. Mérida was a south-western beacon of *Romanitas* in the acorn-strewn wilds of Extremadura, resplendently wealthy under Roman and Visigoth alike, later an Umayyad city of secondary importance; the Duero valley, in the centre-north, played host to lavish late-Roman country estates yet was peripheral to the urban politics that held sway further south; Gallaecia, in the north-west, was a world unto itself, all iron-age hill-forts and rain.<sup>5</sup> Further along the northern coast, in Cantabria, Rome left a fainter footprint still, and in the sixth and seventh centuries the Visigoths laboured to bring the region's inhabitants to heel, enjoying partial success at best.<sup>6</sup> The Arabs took a similarly dim view of the north and north-west, not even bothering to conquer these areas securely after the Berber revolt of the 740s concentrated their minds and their efforts in more amenable

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<sup>5</sup> For an introduction to Mérida see Isaac Sastre de Diego, "Mérida, capital cristiana: De Roma a al-Andalus", *Cuadernos Emeritenses* 41 (2015): 1-297; and the opulence described in 'The Lives of the Fathers of Mérida' (*Vitas Patrum Emeritensium*), in *Lives of the Visigothic Fathers*, transl. A.T. Fear (Liverpool: Liverpool University Press, 1997), 45-105. On the villas of the Meseta, Alexandra Chavarría, *El Final de las Villae en Hispania (siglos IV-VII D.C)* (Turnhout: Brepols, 2007), 210-42. On *Gallaecia*, Pablo de la Cruz Díaz Martínez and Luis R. Menéndez Bueyes, "Gallaecia in Late Antiquity: The Suevic Kingdom and the Rise of Local Powers", in *Culture and Society in Medieval Galicia: A Cultural Crossroads at the Edge of Europe*, ed. J. D'Emilio (Leiden: Brill, 2015): 146-75.

<sup>6</sup> Joaquín González Echegaray, *Cantabria en la transición al medievo. Los siglos oscuros: IV-IX* (Santander: Ediciones de Librería de Estudio, 1998). Note that Catalonia is not treated in this article because of its largely different historiography, and its ties with the Frankish world.

climes. And while the benefits of agricultural wealth and taxation saw urban civilisation thrive in the Islamic south, reaching its apogee in mid-tenth-century Córdoba, the north remained the terrain of kings routinely presented by their own propagandists as little more than *bandidos*. Unsurprising, then, that expectations of literacy, of the role and ubiquity of writing, let alone anything that smacks of 'literate culture' in this wild world to the north of the Duero, are reserved by many historians for the Islamic south, the *quasi*-Frankish Catalans, and the small team of excitable clerics who exaggerated the extent of the marauding Asturian kings' true authority in a series of ninth-century chronicles.<sup>7</sup> A politically and economically marginal zone, so it goes, was necessarily one in which people had better things to do than write.

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<sup>7</sup> On literacy in this world, see the game-changing Graham Barrett, "The Written and the World in Early Medieval Iberia", DPhil Thesis, University of Oxford, 2015; *cf.*, for a geographically broader treatment, *Documentary Culture and the Laity in the Early Middle Ages*, eds. W.C. Brown, M. Costambeys, M. Innes and A.J. Kosto (Cambridge: Cambridge University Press, 2013); for the excitable clerics, see the *Chronica Adefonsi tertii regis*, available in Latin and Spanish in *Crónicas asturianas: Crónica de Alfonso III (Rotense y "a Sebastián") y Crónica albeldense (y "profética")*, eds. J. Gil Fernández, J.L. Moralejo and J.I. Ruiz de la Peña (Oviedo: Universidad de Oviedo, 1985). Classic statements on the literary culture of early medieval Christian Spain can be found in M.C. Díaz y Díaz, *De Isidoro al siglo XI. Ocho estudios sobre la vida literaria peninsular* (Barcelona: Ediciones El Albir, 1976); among more recent texts, see *La Hispania visigótica y mozárabe. Dos épocas en su literatura*, coord. C. Codoñer (Salamanca: Ediciones Universidad de Salamanca, 2010).

But compass points can point us in the wrong direction, and a reading of the society and culture of Iberia based on the traditional historiographical division of the peninsula into a rich, urban, and Romanised early medieval south and east, in contrast with a poor and desolate north and north-west, is challenged by acquaintance with the surviving documentation from the ninth-, tenth- and eleventh-century Christian realms. Across the northern third of the peninsula, from Galicia to Aragón, a dense and deeply-rooted written culture survived, based in large part on Roman and Visigothic precedent. Charters, a surprisingly malleable medium in the hands of scribes well-acquainted with model *formulae*, circulated in great numbers and in response to many needs.<sup>8</sup> One such need was that of securing business arrangements, for owners everywhere saw the benefits of written title to property; another need, moving from the individual to the communal, was that of obtaining justice and implementing correction when and where appropriate. Both of these latter have been discussed in the

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<sup>8</sup> Wendy Davies, *Acts of Giving: Individual, Community and Church in Tenth-Century Christian Spain* (Oxford: Oxford University Press, 2007), is now the standard treatment.

secondary literature, justice, in particular, having been subject to purposeful analyses in both Spanish and English treatments.<sup>9</sup>

What, though, of the relationship between these two leading concerns of everyday people: business and justice? This article investigates a number of questions related to the imbrication of business arrangements (essentially matters concerning the ownership and transfer of land) with the judicial and extra-judicial means by which such arrangements were secured. It argues that the justice sought in local lay courts was not primarily an end in itself, held up as a pristine value to which all might theoretically aspire, but could be and indeed was co-opted by ambitious local players of middling status in order to set a 'public' seal on their own efforts to cement

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<sup>9</sup> Wendy Davies, "Judges and judging: truth and justice in northern Iberia on the eve of the millennium", *Journal of Medieval History* 36 (2010): 193-203; *eadem*, "Summary justice and seigneurial justice in northern Iberia on the eve of the millennium", *Haskins Society Journal* 22 (2010): 43-58; *eadem*, *Windows on Justice in Northern Iberia, 800-1000* (Abingdon: Routledge, 2016). Useful on royal legitimation and the language of justice is Isabel Alfonso, "Judicial rhetoric and political legitimation in medieval León-Castile" in *Building Legitimacy: Political Discourses and Forms of Legitimacy in Medieval Societies*, eds. I. Alfonso, H. Kennedy and J. Escalona (Leiden: Brill, 2004), 51-87; Pascual Martínez Sopena, "La justicia en la época asturleonense: entre el *Liber* y los mediadores sociales", in *El lugar del campesino. En torno a la obra de Reyna Pastor*, ed. A. Rodríguez (Valencia: Universitat de Valencia, 2007), 239-60. On the use of these documents at court, the best starting point remains R. Collins, "*Sicut lex gothorum continet*: Law and Charters in Ninth- and Tenth-Century León and Castile", *English Historical Review* 100 (1985): 489-512. Also good on process is A. Prieto Morera, "El proceso en el reino de León a la luz de los diplomas", in *El reino de León en la alta edad media, II: Ordenamiento jurídico del reino* (León: Centro de Estudios e Investigación "San Isidoro" (CSIC-CECEL), 1992), 381-518.

their standing and enrich themselves at the expense of peers: to this extent, court decrees were less about providing justice for its own sake than they were vouchsafing this densely proprietorial society's attachment to private ownership, a legacy bequeathed by its Visigothic and Roman progenitors.

Yet the protection of business arrangements was not left to the courts alone, for the risk, expense and possibly ruinous consequences of going to court meant that to do so did not always represent the preferred option of non-elite actors who nonetheless wanted written testimony of the settlements they reached with other parties.<sup>10</sup> Sometimes a charter offering a clear exposition of who owed what to whom would suffice, for such a document obviated the stress and cost of going to court and yet provided individuals with the information needed to do so should matters take a turn for the worse. Looking to investigate this question further, then, quite apart from focussing on the running of courts by individuals who appear to have had no claim to

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<sup>10</sup> For evidence of court settlements 'gone wrong', consider the travails of the following individuals. Rebelio, who has the appearance of a medium-level dealer, lost at court in the late ninth century, having staked a claim to land which he later renounced, admitting that he came to possess it through disreputable dealings, having expelled a group of *fratres*: SMP1 (883). Similarly, Sisecutus and Fredinandus' dispute over a vineyard in Mus, a protracted affair which involved several other parties, saw Sisecutus embroil himself during the proceedings in a further dispute with a surety, underlining the risk involved in going to court: T66 (962).



specialised expertise or elite status, this article also asks why going to court was sometimes avoided. It suggests that where we witness agreements settled outside of a formal court setting, such agreements were nonetheless conjured within its shadow – that is, that the very existence of a public judicial system created the need to sidestep the expense and exposure to loss of face and fortune that to use it supposed. Thus, the less formal channels of negotiation which existed outside of the court room, by which non-elite actors sought to have their claims upheld, are interpreted here as the means by which this same group attempted to retain an element of control over proceedings and to mitigate the risks that going to court supposed.

How public and how private?

The provision of justice in early medieval Europe has not wanted for attention among scholars, but almost all scholarship on this matter has had to situate itself in relation to a now rather tired debate about the differences between public and private judicial arrangements, with the order and structure of the former almost always contrasted (implicitly) favourably with the arbitrariness thought to characterise the latter.<sup>11</sup>

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<sup>11</sup> Davies, *Windows on Justice*, 251-2; for Spanish comment on this problem, which tends to see privatisation of justice as bound up with a wider complex of changes instigated by weakening royal power and rising aristocratic power, see José Ángel García de Cortázar and Esther Peña Bocos, “Poder

Although this distinction has been shown to be over-general at best, it remains the case that in early medieval Spain private concerns were corroborated by a written culture that looked to nominally public provisions to ensure that the boundaries of private landholding were respected. Wider public consultation and process were necessary, nay indispensable, if the interests of private landholders were to be met.

It has traditionally been held that the crucial figures in these arrangements were court functionaries and scribes – the *saio* and the *notarius* – as well as those under whose instruction these orderlies toiled, the court presidents and sundry experts. Esteemed locals involved in collective judgement and bargaining known as *boni homines* also played a key role.<sup>12</sup> Judicial hearings took place in many settings, the

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condal ¿y 'mutación feudal'? en la Castilla del año mil”, in *Historia social, pensamiento historiográfico y edad media*, in ed. María Isabel Loring García (Madrid: Ediciones del Orto, 1997), 273-98. Discussion of the settlement of disputes in the European Middle Ages to this day owes much to the pioneering volume *The settlement of disputes in early medieval Europe*, eds. W. Davies and P. Fouracre (Cambridge: Cambridge University Press, 1986).

<sup>12</sup> For a definition of the word *saio*, and examples of its use, see the recent edition of Menéndez Pidal and Lapesa's landmark study, now available in *Léxico hispánico primitivo (siglos VIII a XII)*, ed. Manuel Seco (Madrid: Real Academia Española – Fundación Ramón Menéndez Pidal, 2003), 566-67; *cf.* for the *saio* in action the myriad references in Barrett, “The Written and the World”, *passim*; Luis G. de Valdeavellano also offers a classic description of court officers in the Spanish Middle Ages in his *Curso de Historia de las Instituciones españolas: de los orígenes al final de la Edad Media* (Madrid: Alianza Editorial, 2008), 405-6; for the functions associated with the word in an earlier period, see P.D. King, *Law and Society in the Visigothic Kingdom* (Cambridge: Cambridge University Press, 1972), 94-5, 188.

monastery, the comital court, and the royal court among them; those who sat in judgement included the court holders, clerics, specialist judges trained in the law, and aristocrats whose presence owed more to their status than it did their expertise.<sup>13</sup> In general terms, however, there can be little doubt that the system of courts that operated in northern Spain in the period in question was characterised by a high degree of coherence in structure and procedure.

#### The documentary trail of the local litigant

Beyond the legal arena of the specialist, the expert, and the high status individual, things looked somewhat different. What, though, can we say about lay court holders of middling status operating away from political centres? And what, by extension, can we say about lay actors who were unencumbered by any nominal executive role at court, individuals with a stake in proceedings but no official authority to determine their outcome? Why did these people go to court, and why, sometimes, might we suppose that they avoided doing so? These individuals were oftentimes medium-level operators whose business activity – in most cases brought to light by a mere handful

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<sup>13</sup> Davies, *Windows on Justice*, ch. 6.

of documents – was not *per se* of immediate concern to the social and political elites who ordinarily ran court cases.

A first question to consider, then, is the survival of material recording the role and activity of the medium-level village dealer at court. Here we are obliged to reflect upon the embeddedness of writing and buying in this society; the former accounts for the documentation's very existence, the latter for the information we possess regarding business and the procurement of its legal safeguard. Information on these matters often appears to come from charters commissioned by lay individuals, presumably for the purpose of constructing their own archive.<sup>14</sup> It is indeed striking that the handful of extant examples of small- to medium-scale individuals holding courts, or dragging others through them, invariably have their origins in lay archives (even if later folded into monastic archives). Some of these archives are restricted to two or three documents, each archive containing within it the bare essentials of an individual's business activity, which must speak of the common recourse that their owners expected to make to the law in order to protect their business interests.

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<sup>14</sup> Barrett, "The Written and the World", 136-8 and 148-9; cf. A.J. Kosto, "*Sicut mos esse solet*. Documentary Practices in Christian Iberia, c. 700-1000", in *Documentary culture and the Laity*, ed. Brown *et al.*, 259-82.

From another vantage point, the very existence of such small collections of charters, whether they happen to detail involvement in legal proceedings or not, hints at the utility of these documents as legal instruments. A simple document of sale, after all, was still a legally binding contract.<sup>15</sup> That so many documents survive which record the transfer of land between small- to medium-scale landowners can mean only one thing: this was a society deeply attached to private landowning at all levels, a fact which must have conditioned documentary culture and archival practices. For to own land drew one into a world of contractual obligation, regardless of one's status, meaning that the function of the charter, and the need to keep it close to hand, was fundamentally the same for all of its commissioners; that is to say that 'peasants who have left no more than a few charters to their name evidently felt the same need as aristocrats to arrange them for preservation and consultation.'<sup>16</sup>

In cases where the narrative contents of two-or-three-document archives indicate that formal legal proceedings at court played no part in the settlement of

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<sup>15</sup> See LV 5.4.1 and 5.4.3 in *Leges Visigothorum*, ed. K. Zeumer, *Monumenta Germaniae Historica, Leges*, I (Hanover: Impensis Bibliopolii Hahniani, 1902).

<sup>16</sup> By far the most comprehensive record of these individuals has been compiled by Barrett, in his "The Written and the World", 359-60. I thank him for discussing its implications with me on numerous occasions.

contested claims to title, with successful conclusions reached instead by extra-judicial means, we see another dynamic at work, noted earlier: that of the local operator reluctant to go to court as a first resort, and yet cognisant of the need to obtain written safeguard for his or her holdings. The medium-level operator Arias, whose modest dealings on the outskirts of León in the middle of the tenth century are restricted to five unremarkable charters, took this route; unable to pay him the grain, cheese and wine that they owed him, a group of peasants agreed to give Arias land they owned in the village of Méizara in order to cancel the debt.<sup>17</sup> In these instances, deals were struck and reputations to some degree saved; Arias saw his holdings and local status augmented and did not have to run the risk of a less favourable settlement at court. The peasants saw their debts wiped clear, albeit for the loss of some land, but it is probable that this informal and personal rather than official and quasi-institutional means of reaching a settlement seemed preferable to taking the matter to court. After

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<sup>17</sup> Arias' dealings: L371 (964) – the document discussed here; L372 (964); L373 (964); L374 (964); L423 (973).

all, to go to court unless almost certain of achieving a desirable outcome is to assume a risk best avoided.<sup>18</sup> Better then, to appeal to the good nature of one's neighbours.

### The Middling Sort

Who were these people? Is this merely a story of “landowners with limited horizons but local knowledge” attempting to deploy public precepts as best they could, or one of rising seigneurial interest?<sup>19</sup> Medium-level owners, the focus of this article, are understood to have been individuals embedded in or close enough to the village world to engage in humdrum and quotidian deals with its inhabitants – individuals like Arias. They were not aristocrats, legal experts or ecclesiastics, but formed the middling ranks of the same world in which they sought to rise.<sup>20</sup> In a landmark study of the northwestern quadrant of Iberia Richard Fletcher claimed that “this rural middle class

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<sup>18</sup> It is clear, for example, that cases did sometimes turn out opposite to what we might expect. Witness L669, in which the Church loses at court to Count Munio Fernández in 1008, the charter reaching us via what must have been his own personal archive.

<sup>19</sup> The phrase belongs to Davies, *Windows on Justice*, 210.

<sup>20</sup> For the centrality of business in this society, see Robert Portass, *The Village World of early Medieval Northern Spain: Local Community and the Land Market* (Woodbridge: Boydell and Brewer and the Royal Historical Society, 2017).

was densely distributed over the whole face of Galicia".<sup>21</sup> Thanks largely to the work of Wendy Davies, it is now clear that there was nothing specifically Galician about it.<sup>22</sup>

Although much of our information about this middling group's activity reaches us somewhat anecdotally in incidental reports rather than formal court records, and indeed in documents which show that disputes were solved without the help of courts, it is clear that a considerable number of private landholders went to the law, and, to complicate matters still further, some even held courts themselves. The mid-ranking members of this world were therefore possessed of a level of business acumen seldom acknowledged: some willingly took on the conventional role of plaintiffs; others took over the executive role of the court holders for themselves; while others avoided court altogether. Uniting all of them was the deeply ingrained respect for private property ownership that underpinned this society.

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<sup>21</sup> R.A. Fletcher, *St. James's catapult: the life and times of Diego Gelmírez of Santiago de Compostela* (Oxford: Oxford University Press 1984), 14. On this group, see Portass, *The Village World*, ch. 7. Although their emphasis is rather different to that preferred here, Galician rural society has been illuminated greatly by E. Portela and M.C Pallares Méndez, "La villa, por dentro: testimonios galaicos de los siglos X y XI", *Studia Historica Historia Medieval* 16 (1998): 13-43.

<sup>22</sup> Davies, *Acts of Giving*, esp. ch. 3.



## Transaction and local society

Buying, selling, and seeking legal redress are well-studied aspects of this society, documented and analysed in several excellent recent studies.<sup>23</sup> Explanations of the density of sales extant in the record (not to mention those that must have been lost), and of the important role played by judicial process in settling claims to ownership, are on the whole less imaginative. Historians tend to find themselves largely in agreement about the forces and motives underlying transactions, which are straightforwardly presented as those of rapacious lordship or even emergent seigneurialism; here competing interests are necessarily antagonistic, and, on occasion, seen as explicitly class-bound.<sup>24</sup> Although this metanarrative has faced challenge beyond Spain, notably thanks to studies which examine our understanding of documentary culture, the land market, and the horizontal bonds underpinning local society, Iberian

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<sup>23</sup> Davies, *ibid.*, is now the classic study of donation but it also considers sale, which is analysed from a different vantage point in "Sale, price and valuation in Galicia and Castile-León in the tenth century", *Early Medieval Europe* 11 (2002): 149-74. On justice, alongside work already cited in this article, see Isabel Alfonso, "Campesinado y Derecho: la vía legal de su lucha (Castilla y León, siglos X-XIII)", *Noticiario de Historia Agraria* 13 (1997): 15-31; cf. José Miguel Andrade Cernadas, "La voz de los ancianos. La intervención de los viejos en los pleitos y disputas en la Galicia medieval", *Hispania* 72 (2012): 11-34.

<sup>24</sup> Reyna Pastor, *Resistencias y luchas campesinas en la época del crecimiento y consolidación de la formación feudal: Castilla y León, siglos X-XIII* (Madrid: Siglo Veintiuno de España, 1980); see too the opening remarks of Alfonso, "Campesinado y Derecho", 16.

historiography largely remains wedded to insufficiently nuanced understandings of social relations in the early medieval world.<sup>25</sup> Thus, lords exploit peasants, and peasants are largely docile in response: where these latter act, they resist; what they were doing when not resisting is seemingly of scant interest.<sup>26</sup>

The dynamism of the village world is nowhere more clearly documented, however, than in the accounts we have of the business of the ‘middling sort’, that is, the peasant proprietor looking to add to his landed holdings by means of timely and strategic small-scale transactions. Several examples of these individuals – or, more often than not, couples – survive in the charters, and their incidence is not confined to any particular sub-region of the northern peninsula. On the contrary, this article will show that examples can be provided from Portugal and Galicia in the West, and from

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<sup>25</sup> Exemplary recent studies: Kosto, “Sicut mos esse solet”; Barrett, “The Written and the World”; Wendy Davies, *Small worlds. The village community in early medieval Brittany* (London: Duckworth, 1988); L. Feller, A. Gremain and F. Weber, *La fortune de Karol: marché de la terre et liens personnels dans les Abruzzes au haut moyen âge* (Rome: Ecole française de Rome, 2005).

<sup>26</sup> The limitations of this approach are myriad, but one example can here serve for many others; explanations which seek to deny the agency of peasants offer no explanation for, say, the three purchases made by Didacu Danielliz and his wife Vislavara, all dated to the same day in 1002, and all appearing to show this peasant couple buying from their peers. These documents, which survive as “originals”, were not commissioned by a monastery or indeed any lordly figure, but by Didacu and his wife; their purpose was simply to provide written record of their business activity. The documents in question are: OLD59; OLD60 and OLD61.

the Leonese heartlands of the tenth- and eleventh-century kingdom in the centre of the peninsula. Such material is at the very least indicative of the existence of a stratum of village society characterised by its desire to acquire landed holdings large enough to support more people than the immediate family group.

These individuals were the upwardly mobile, and their business interests required legal protection. Quite often, this scale of dealing must have brought with it significant social capital – one family in the Liébana, for example, can be seen to have engaged in a dozen or so small-scale transactions with neighbours, presided at court at least once, and installed their son Opila as abbot at the local monastery.<sup>27</sup> In similar fashion, in the charters of the Cathedral archive of León we bear witness to Cidi Domínguez, who bought land from a variety of individuals in the hinterlands of León during several decades of the eleventh century; to our knowledge Cidi did not hold court himself but on one occasion took a rival to the court of the bishop of León in an effort to stave off a false claim to his property, made by a certain Bellite.<sup>28</sup> These

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<sup>27</sup> See Portass, *The Village World*, ch. 3.

<sup>28</sup> For the court case with Bellite, see L884 (1031).

individuals were keen to delineate the boundaries of their property, whether that meant turning to a public authority or taking on this role for oneself.

While not all such families can have been so successful, the majority assuredly realised the worth of documenting the acquisition of land, even though most of this documentation has likely not survived to the present day. Nonetheless, our records demonstrate that efforts made to ensure the legal protection of business interests could take a number of forms; as the two examples above show, sometimes local operators ran makeshift courts whilst still making an effort to enshrine procedure in the legitimacy accorded to public acts; on other occasions it was seemingly enough for the strivers of this world to accept gifts of land from contrite debtors, these latter having been admonished *in iudicato* for failing to pay up.<sup>29</sup> Accordingly, we need to unpick the tangled threads of quite complicated narrative accounts, divergent in detail, content and context, in order to shed light on the links between justice on the one hand, and, on the other, the sales, donations and exchanges which represented the typical business activity of the mid-ranking inhabitants of the village world.

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<sup>29</sup> A useful example here is Cel160 (963): “et abui in iudicato a dare VII solidos”.

### *Caveat venditor*

It is perhaps unsurprising that the few examples we have of lay court holders clearly drawn from the middling ranks of the village world paint a picture of less structured and more *ad-hoc* arrangements than we routinely associate with courts run by counts and abbots. Examples of courts run by medium-level operators share similar characteristics – the apparent absence of court officers and specialist jurists, for instance, is common to the examples discussed in what follows – but it is also true that the ‘public’ justice on display here reflected the local circumstances and contexts peculiar to each case; this means that while acquaintance with the stilted legalese of phrases such as ‘*invenit eum lex et veritas*’ mattered for those framing Bagaudano and Faquilona’s court-holding high in the Liébana mountains (discussed below), on other occasions the recorders of this activity did not consider rhetorical flourishes of this sort essential. Pragmatic motives were likely motive enough for court holders whose primary concern was the public airing of their claims to legitimate landownership. This penchant for florid rhetoric, combined with the absence of dedicated legal officers, does not make the judgement reached by the likes of Bagaudano and Faquilona any less public than that determined in a case seen before

a count or a trained *iudex*, because cases of the sort examined in this article share the single attribute common to all public procedure: namely, the wish to be seen to take action *coram populo*, the legitimacy of landowning itself depending to some degree on public approbation, especially when contested claims arose.

It is likewise unsurprising that investigation into lay court holders has focussed on individuals who might by any definition be described as magnates, some of whom held the title “count”, and may have been therefore in some sense the “king’s men”.<sup>30</sup> Things were rarely as straightforward as this description implies however, and when it comes to court holding we need to remain wary of traps laid by the historiography, as has recently been pointed out:

Although conventionally called ‘count’ by modern writers, Hermenegildo of Sobrado is never referred to as ‘count’ in any of the many charters detailing his holding of judicial courts in the first half of the tenth century, even though these are cartulary copies (but the cartulary compiler did once call him ‘count’ in the title he added to a charter); while it is possible to construct an argument about his countship from family relationships, from references to counties in the Sobrado cartulary, and from earlier and later history, that is not quite the same. There is nothing in texts of the first half of the tenth century,

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<sup>30</sup> Davies, *Windows on Justice*, 20-6.

when he was active, to link Hermenegildo's court holding with countship.<sup>31</sup>

Even if not a count, or at the very least someone who thought it necessary to associate his holding of the countship with court holding, Hermenegildo is too grand a figure to merit much discussion here, for he cannot realistically have interacted with the village world on a daily basis in the way that we know other court holders in the farther reaches of the kingdom to have done. The same is true for the remarkable court-holding activity of the counts whose archives came to be preserved by the monastery of Santa María de Otero de las Dueñas, who were significantly enriched in the years after 1000 by means of collecting the profits derived from court holding.<sup>32</sup> Once again, everything about their activity is redolent of public procedure, but there was a gulf in social standing here between those holding the court and those subject

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<sup>31</sup> *ibid.* 21-2.

<sup>32</sup> A. García Leal, "El archivo de los condes Fruela Muñoz y Pedro Flaínez (854-1048): una visión nueva de viejos documentos", *Signo* 13 (2004): 121-8; *cf.* the same author's "Los condes Fruela Muñoz y Pedro Flaínez: la formación de un patrimonio señorial", *Anuario de Estudios Medievales* 36 (2006): 1-110.

to its strictures which did not separate the local court holders examined in this article from their neighbours.<sup>33</sup>

This notwithstanding, what court holding looked like when apparently in the hands of medium-level operators requires some comment. To my knowledge, by far the best example of a local couple of upwardly-mobile *arrivistes* who bought their way to the apex of village society, and later came to play some part in the operation of justice in their community, is provided by Bagaudano and Faquilona. Over a period of twenty or so years, this couple rose within the village world by way of the assiduous and carefully calibrated accumulation of a portfolio of landed holdings, overwhelmingly acquired from their soon-to-be-left-behind peers.<sup>34</sup> This process took place in a part of the kingdom, the Liébana valley, for which there exists scant evidence of the kind of formal “public” judicial structures we see documented elsewhere in the peninsula.<sup>35</sup>

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<sup>33</sup> Kosto, “Sicut mos esse solet”, 273-4; as Adam Kosto has pointed out, the contents of the original parchments on which their activity survives indicate that this was a private family archive.

<sup>34</sup> Fourteen documents provide information about this campaign of buying: T18 (914); T21 (915); T23 (916); T25 (918); T26 (920); T27 (921); T28 (921); T32 (925); T35 (927); T36 (927); T39 (930); T40 (930); T41 (932); T42 (915-932).

<sup>35</sup> See Portass, *The Village World*, ch. 3.



The public sphere, such as it was, did not lie dormant, however. This much is made clear by a document which shows Bagaudano and Faquilona taking up the reins of the public in no uncertain terms, for the charter alludes to their having held a court of their own. A record of an otherwise unremarkable transaction between Bagaudano and Faquilona and another peasant couple, Juan and Paterna, describes how a vineyard at Basieda (which changed hands in the aforementioned transaction) had originally been given to Bagaudano and Faquilona by a certain Toribio; this individual, about whom we know virtually nothing, had at some earlier stage been obliged to hand over the vineyard because he had assisted his brother's attempts to conceal the crime of cattle larceny. In other words, by helping to hide his brother from justice after he (the brother) had stolen cattle from peasants named Egerio, Flacenco and Suinito, Toribio was ordered (presumably by Bagaudano and Faquilona) to pay a fine to the holders of the court – almost certainly Bagaudano and Faquilona themselves.<sup>36</sup>

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<sup>36</sup> T41 (932): 'et uos dedistis nobis Iohanni et Paterne aliam uiniem in Bosita, quem pariabit uobis Turibius filius Florenci et Teudille, pro eo quod celauit suum germanum ab eodum qui furtabit illos III boues, unum de Egerio, et alium de Flacenco et tercium de Suinito et inuenit eum lex et ueritas et parabit uobis ipsa uinea'.

Nothing indicates that Bagaudano and Faquilona's receipt of the vineyard was due to the fact that the three peasants from whom Toribio's brother had stolen were their dependents. Quite the contrary is in fact likely, for persuasive arguments have been advanced to show that this sort of activity did not represent the seigniorial take-over of the courts – that is, private interest usurping the public – but something quite different. Documentation from across northern Spain shows that a characteristic feature of judicial process was that locally prominent individuals could and did receive the profits from ostensibly public procedures.<sup>37</sup> Thus Bagaudano and Faquilona's involvement at court did not represent the encroachment of private interests onto the terrain of standard public court procedures; far from it, this couple fulfilled a quasi-public role, for they not only resolved a dispute in public, but went on to frame it very pointedly in language which was imbued with a sense of the public ('invenit eum lex et veritas').<sup>38</sup>

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<sup>37</sup> Davies, *Acts of Giving*, 143-49.

<sup>38</sup> Consider that the public law of the kingdom was, for the Visigoths, the 'messenger of justice' ('iustitie nuntia'): *LV* 1.2.2. For a discussion of some of this vocabulary in similar contexts see J.M. Mínguez Fernández, "Pacto privado feudal y estructura pública en la organización en la alta Edad Media", *Res Publica: Revista de Filosofía Política* 17 (2007): 59-80; Davies, "Judges and judging".

Wheelers and dealers of significant local purchase whose status nonetheless conforms with that of the mid-ranking stratum of this society can be seen running courts in other parts of the peninsula too. It is crucial to realise that these individuals were not counts, dedicated legal officers or churchmen; they were simply local strongmen in search of their due. Consider the example of Munio Núñez and his wife Paterna, whose two charters survive on original parchments from the Cathedral archive of León (although it appears that Munio and Paterna conducted their business in the Asturias).

One of these charters tells the story of a perfectly normal exchange that this couple undertook with Leuvildi and his brother Ermegildo; this document is a simple and unadorned record of peasant business.<sup>39</sup> The other charter of Munio and Paterna is decidedly less usual insofar as its content is concerned. In this charter, Segerico and others hand over part of an orchard to Munio and Paterna, these two having apparently presided over court proceedings held in the wake of a disagreement ('*Damus adque concedimus vobis...in vestro iudigato, pro intencione que abemus*').<sup>40</sup>

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<sup>39</sup> L204 (949).

<sup>40</sup> L138 (940).

Although less explicitly public in its language than the document featuring Bagaudano and Faquilona discussed above, this sort of court holding was still public in the most fundamental sense: it speaks of the desire to be seen to take action for the good of the wider community. The private interests of the mid-ranking members of village society were thus served by the performing of public duties.

What gave Munio and Paterna the authority to act in this way cannot be known for certain but if they indeed enjoyed the status of well-heeled medium-level property owners in their community, which must be surmised from their role at court, it is conceivable that this alone conferred suitability upon them, as it did Bagaudano and Faquilona, for prestige and status were clearly invested in property holding. Context here was likely significant too. Both of these couples operated in rather remote territories encircled by mountains, Bagaudano and Faquilona in Cantabria, Munio and Paterna in the Asturias. The less sharply defined social hierarchies common to this sort of community might have played a part in the assumption of public judicial functions, perhaps rather underdeveloped in character, by the rich local ne'er-do-wells of the community. It is, after all, widely accepted by sociologists that the actions of

“big fish in small ponds” are conditioned by the environment in which the “big fish” find themselves; it is not unreasonable to propose therefore that the likes of Munio and Paterna likely took on a range of responsibilities which would perhaps not fall to them in larger, wealthier and more socially complex communities.<sup>41</sup>

Another example, this time from northern Portugal, indicates that court holders of mid-ranking status sometimes convened courts specifically to note and record the remedy of injustices perpetrated against their own interests. Fruela Ansaloniz is an interesting character who only crops up in two charters, both of which survive as “originals” and must have formed part of his own private archive.<sup>42</sup> In both of these charters Fruela receives donations, one of them from a certain Cresciduru, who claims to have appeared before Fruela at court. An eighth of an orchard is then given (the charter is classified by its writer, the priest Sagado, as a “*testum scriptura donacione*”) by Cresciduru to Fruela “because of the dispute and the judgement I had before you”. Is Cresciduru implying here that Fruela was the court holder?<sup>43</sup> It would appear so.

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<sup>41</sup> D.Y. Dai, “How universal is the big-fish-little-pond effect?”, *American Psychologist* 59 (2004), 267-8.

<sup>42</sup> PMH30 (925); PMH43 (937).

<sup>43</sup> PMH43 (937): ‘damus vobis de ipso pumare integro que fuit de alvito octaba integra pro intencione et iudicio que abui ante vos’.

In any case, at the very least what we face here is another example of what might be called a “compensatory donation” – a penalty fixed at court, probably by the court holder, but dressed up as donation in the formal language of these texts.

A problem common to this material is that sometimes we can be sure that legal proceedings have taken place but less sure of when, in what circumstances, and under whose control. Incidental references to agreements reached after judicial settlements had taken place are in fact not hard to find. Witness Senuldo, who handed over two vineyards and some land to Sandino Moniz and his wife Eilo in southern Galicia in 963.<sup>44</sup> He made this payment in lieu of a fee of *VII solidares* which had been imposed *in iudicato*. Sandino and Eilo appear in four charters, and were seemingly mid-ranking peasants, for apart from the document under discussion here they are recorded dabbling in the sort of small-scale purchases common to medium-scale landowners; the indications are, however, that they held the court at which Senuldo’s case was heard, for it is they who receive the fee.<sup>45</sup>

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<sup>44</sup> Cel160 (963).

<sup>45</sup> The other three charters in which they appear are: Cel168 (965); Cel169 (967); Cel179 (974).

More broadly, although it is hard to decipher the anecdotal accounts of small courts in faraway places examined above, in each instance we are drawn back to the public ethos in which such proceedings shrouded the court holders. In every instance, community solutions were being sought for what were essentially private problems, but it was the aspect of public performance that gave these acts their legitimacy and anchored them in contemporary legal praxis. The business interests of Bagaudano and Faquilona, Munio and Paterna and Fruela Ansaloniz were all protected in part by their ability to play some role at court, no matter how opaque – but theirs was a role invested with more authority than that enjoyed by the ordinary litigant. What these examples show is that the spectre of the law was never far away and that it pervaded and policed transaction in the same way that it pervades the documentary record.

#### Avoiding court, seeking redress

Although the examples discussed above provide food for thought, medium-level owner-cultivators who also ran courts, however infrequently, were probably rather rare. There were in any case easier ways to reach settlements with other parties and to have this reflected in the documentary record, thereby arming oneself with the information required to protect one's interests. Sometimes this took the form of the

individual who stood to gain from pursuing the matter obliging the party at fault to consent to the drawing up of a document which set out the issue at stake and settled upon a method of resolving it. This is what we might plausibly read into the charter of Arias discussed above, in which this apparently medium-level operator accepted land in lieu of the repayment of various goods he had lent to a group of peasants.<sup>46</sup> This document doubtless sat happily alongside the simpler accounts of sales which make up the rest of his archive.

Likewise, a similar scenario seems to have played out in northern Portugal in the early eleventh century, this time between a figure of analogous status to Arias, a certain Ederonio Alvitiz, and one of the peasants with whom he engaged in business. Ederonio, sometimes in league with his wife Crastina, made six relatively modest purchases of land in Custóias, in *territorium portugalensis*, between 1006 and 1010, one of which stands out for the unusual form it takes in the documentary record.<sup>47</sup> In this charter Ederonio accepted part of an estate valued at ten *modios* in order to cancel

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<sup>46</sup> L371 (964).

<sup>47</sup> The six documents are: PMH195 (1006); PMH199 (1008); PMH203 (1008); PMH204 (1008); PMH208 (1009); PMH215 (1010).



a debt of the same amount owed to him.<sup>48</sup> Presumably this arrangement saved the disputing individuals from going to court.

Sometimes disputes solved by means of recourse to extra-judicial measures hint at a back story involving more formal procedures, suggesting that genuine compromise and negotiation beyond the courtroom were possible. Taurelo and Principia, whose documented activity is confined to two charters preserved on parchment sheets which must have belonged to their personal archive, also avoided pressing for formal legal proceedings at court, although how they did so is interesting.<sup>49</sup> For this couple, it was enough to point to the findings of an earlier court case which had significant bearing on their own claim. The story goes that Bellite and others gave Taurelo and Principia a quarter of a plot of land while acting as the executors of their father's will; their father, Bonmenti, had gone to court with a certain Cecilio, lost the case, and found himself obliged to pay Cecilio *pro illo iudicio*. Unable to pay this amount to Cecilio, Bonmenti had been helped by Taurelo and Principia, who paid it for him. The charter under discussion was thus drawn up for Taurelo and

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<sup>48</sup> PMH208 (1009): "pro que accepimus in precio in X modios que se face de illos sanal que vos habuimos a dare".

<sup>49</sup> Their two charters are: L473 (980) and L474 (980); the case dealt with here is L473.

Principia's benefit, and it shows that in spite of complications, one court case was sometimes enough, if all parties could be made to do the honourable thing.

What to make of these varied descriptions of the reaching of extra-judicial settlements? It is commonly assumed that the survival of the legal apparatus required for a matter to be taken to court, that is, in the most basic sense, written law, court officials, and a space designated a "court", is self-evidently reason enough for matters to reach court. But a question too infrequently asked is against whom and in what circumstances one would seek legal redress at court in early medieval Iberia.<sup>50</sup> Historians tend to assume that the reason that there exist few charters in which the seemingly weaker party at court emerged victorious must reflect the fact that the weaker party almost never won, or that the documents recording such rare moments were of no interest to the institutions that collected charters. Yet it is far from certain that going to court would have been seen as an appealing prospect even by those middle-ranking peasants who could reasonably expect to win, for to go to court unless almost certain of achieving a desirable outcome is perilous.

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<sup>50</sup> Wendy Davies bucks this trend in *Windows on Justice*, 194-5; some consideration is also given to this matter by Jeffrey Bowman, in his excellent *Shifting Landmarks: Property, Proof and Dispute in Catalonia around the Year 1000* (Ithaca: Cornell University Press, 2004), ch. 4.

Taurelo and Principia are a case in point: did they skulk around the margins of domestic unrest, muscling in at appropriate times to provide resources for desperate peasants, the pay-day lenders of their day? Or might we see the function that they provided in a more charitable light? That is, perhaps they assisted a friend in straitened circumstances and simply expected recompense down the line. To ensure they got this recompense, Taurelo and Principia had Bellite and his friends recognise the role that they had played when these unfortunate souls next visited a scribe. Either way, here the charter implicitly specified that arrangements had been made such that no formal proceedings would be necessary. Where extra-judicial strategies of staking one's claim to the spoils were pursued, to possess a charter was paramount; writing and business went hand in hand.

Owning, defending, writing

What to read into this kind of activity is to some degree so obvious that it is easily overlooked: to be in possession of a charter was likely protection enough for its owner when faced with rival claimants to land who could not produce a similar document at court. But to have a document drawn up to record the details of an extra-judicial settlement was intended to make the already less appealing need to go to court even

less likely. The very real ways in which the physical possession of the document must have helped those keen to add to or protect their landed holdings must, in turn, explain the numerous private archives which have now been identified among the entire corpus of charters.<sup>51</sup>

Reflections on these matters from further afield bear this observation out. Indeed a more or less contemporary source from the British Isles summarises this situation rather neatly; the tenth-century *Libellus* of Bishop Athelwald of Winchester, parts of which were copied into the twelfth-century *Liber Eliensis*, explains prosaically that in matters of contested acquisition “the person who had the charter was nearer to having the land than the one who did not have it”.<sup>52</sup> What this must imply is that title-deeds were as indispensable to the mid-ranking members of this society as they were to elites, for they were the surest way of demarcating one’s holdings from those of rivals.

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<sup>51</sup> Barrett, “The Written and the World”, 359-60.

<sup>52</sup> Knowledge of the relevance and comparative interest of this source I owe to Dr Charles Insley’s comments in his excellent “Archives and lay documentary practice in the Anglo-Saxon world”, in *Documentary Culture and the Laity*, ed. Brown *et al*, 336-362. For the reference to the *Libellus*, see the *Liber Eliensis*, ed. E.O. Blake (London: Offices of the Royal Historical Society, 1962), 99; for a translation into English, used here, see *Liber Eliensis: A History of the Isle of Ely from the Seventh to Twelfth Century*, transl. Janet Fairweather (Woodbridge: Boydell Press, 2005), 122.

## Conclusions

The nature of an investigation such as this, in light of the extant source material, can only be episodic and selective in its methodology and cautious in its conclusions, but some light can be shed on the nature of dispute settlement involving the mid-ranking people of the village world of Christian Iberia in the early Middle Ages, and some suggestions for future analysis proposed. First, it is important to approach the study of this material by refusing to lose sight of the bigger picture; namely, what do the diversity of dealings encoded in the apparent formality of legal proceedings actually tell us about social practice at large? The study of the courtroom, alternative channels of dispute settlement, and more metaphysical notions concerning truth and justice, remains significant because of what it tells us about social, economic and political relations more broadly.

Second, and linked to the foregoing, what motivated people to use courts or to take different avenues when arranging their business affairs? Investigating the pursuance of justice for its own sake leads us to a dead end, and seems at odds with the busy, practical, worldly and yet elastic approaches that people took to the settlement of disputes in early medieval Iberia. *Iustitia* is by no means a constant in

the language of these texts, although it does make an appearance in some.<sup>53</sup> Even where it does appear it may well simply represent ‘the right way of doing things’ – a formulaic conceit designed to shore up the authority of the text’s conclusions. Another common formula seems to suggest that the acknowledgement of the truth – which is not necessarily the same thing as justice – served a similar kind of purpose, presumably because it too was thought to bolster the watertightness of the settlement detailed in the charter.<sup>54</sup> These terms in any case are little more than aides-memoires – their purpose is to signal to and to remind the reader of the document that the details of the settlement described in the charter are unimpeachable, legitimate and lawful, although whether they *really* were is of course unknowable and must have varied from case to case.

It seems improbable, then, that the settlements reached in and out of the courtrooms of tenth- and eleventh-century Christian Iberia can be equated with a search for justice in its most abstract sense. But if the promotion of the public good underlay attempts to settle disagreements, and operated alongside a shared desire to

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<sup>53</sup> Davies, *Windows on Justice*, 255-60.

<sup>54</sup> In Cel160 (963), Sendulo notes of himself “agnovi me in veritate”. For further discussion, see Davies, *Windows on Justice*, 123 and 259-60.

be seen to correct wrongs, which it indeed did, then there is something here of Cicero's rather pragmatic description of what justice in reality ought to be when placed in the hands of the individuals charged with its implementation: "Fundamenta justitiæ sunt, ut ne cui noceatur, deinde ut communi utilitati serviatur".<sup>55</sup>

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<sup>55</sup> Cicero, *De Officiis*, ed. W. Miller (Cambridge, Mass.: Harvard University Press, 1956), I. 10.